

## An Open Request to State-Bar Section Councils

By the Plain English Committee

To: The following Section Councils of the State Bar of Michigan:

Administrative Law  
Alternative Dispute Resolution  
Antitrust, Franchising and Trade Regulation  
Arts, Communication, Entertainment and Sports  
Aviation Law  
Business Law  
Computer Law  
Criminal Law  
Environmental Law  
Family Law  
Intellectual Property Law  
International Law  
Judicial Conference  
Juvenile Law  
Labor and Employment Law  
Latin American Bar Activities  
Law Practice Management  
Law Student  
Legal Administrator  
Legal Assistants  
Negligence Law  
Probate and Estate Planning  
Public Corporation Law  
Real Property Law  
Senior Justice  
Taxation  
Workers' Compensation Law

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

Re: Clarity Awards

*The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, one turns as it were instinctively to long words and exhausted idioms, like a cuttlefish squirting out ink.*

*But if thought corrupts language, language can also corrupt thought. A bad usage can spread by tradition and imitation, even among people who should and do know better.*

*The point is that the process is reversible. Modern English, especially written English, is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble. If one gets rid of these habits one can think more clearly, and to think clearly is a necessary first step toward political regeneration.<sup>1</sup>*

### First Clarity Award

In 1992 we created the Clarity Awards to show that clear writing isn't just a theoretical concept found only in legal writing classrooms in law schools. The purpose of the awards is to encourage lawyers to eliminate legalese. We do this by trying to identify, promote, and publicize many examples of clear legal writing that are actually used in the practice of law in Michigan.<sup>2</sup> We gave the first Clarity Award to the Michigan Supreme Court's State Court Administrative Office for developing and promoting plain English court forms.<sup>3</sup> The State Bar's press release on the Clarity Award was publicized in the *Michigan Lawyers Weekly*, *The Detroit Legal News*, *The New York Times*, and several local radio stations.

### 1993 Awards

In 1993 we gave six awards,<sup>4</sup> and the State Bar's press release was publicized in an Associated Press newspaper article carried in newspapers in many states. The committee received inquiries about this article

from North Carolina, Ohio, and Texas. The awards were also publicized in a telephone interview in "The Osgood Report," a nationally broadcast CBS Radio news program.

### 1994 Awards

This year we gave five awards, and the State Bar's press release was again publicized in legal and general newspapers.

### Next Year's Awards

Each year we have asked for nominations for Clarity Awards. But each year we have had to find them ourselves. This is discouraging in a profession that prides itself for the precision and quality of its writing. So this year we're going to step up our requests a notch. We respectfully ask each of the Section Councils of the State Bar to send us one example of clear writing from an area of the law in their Section's jurisdiction. For example, we ask the Council of the Public Corporation Section to submit one example of clear writing that has anything to do with public corporations. Our committee (which includes three legal writing instructors) will then review the clarity of these writings for formalisms, archaic words, redundancies, sentence construction, use of verbs instead of abstract nouns, and other elements of good and bad writing. We would like to give 27 Clarity Awards next year, one for each entry that is submitted by the 27 Section Councils of the State Bar.

### Guidelines

Send the examples to Clarity Award, 2000 Second Ave., Rm. 688-WCB, Detroit, MI 48226, c/o George Hathaway, anytime between now and November 15, 1994. Maximum length is five pages. (Do not send briefs.) As a start, we would like to see statutes without "pursuant to"; resolutions

without "Whereas"; administrative rules without long sentences; complaints, answers, and motions without "Now comes" and "Wherefore"; orders without "It is hereby ordered"; subpoenas without "You are hereby commanded"; affidavits without "SS"; listing agreements without "hereby"; sales agreements without "said"; title-insurance policies without "hereof"; deeds without "Know All Men By These Presents"; major-league baseball tickets without "hereof"; land contracts without "commence"; mortgages without "covenants"; car-insurance policies without "In Witness Whereof"; consumer-finance agreements without "hereinafter"; new-car sales agreements without "In the event of"; wills without "heretofore"; and trusts without "saith."

## Conclusion

*An important . . . innovation rarely makes its way by gradually winning over and converting its opponents: it rarely happens that Saul becomes Paul. What does happen is that its opponents gradually die out and that the growing generation is familiarized with the idea from the beginning.<sup>5</sup>*

However, regardless of what law students learn in legal writing classes in law school, they are swamped by the traditional legalese-filled documents and forms when they begin to practice law. Unless these documents are changed now, growing generations of new lawyers, even if familiarized with the idea from the beginning, will forget it in practice. And we will enter the next century with executive orders that squirt out "Given under my hand and the Great Seal of the State of Michigan this 1st day of January, in the Year of our Lord, Two Thousand, and of the Commonwealth, One Hundred Sixty-Four." ■

## Footnotes

1. Orwell, *Politics and the English Language*.
2. Lake Superior State College's Unicorn Awards are funny and get a lot of press. But they have zero effect on improving the quality of writing. Everyone laughs, but no one changes, not even those who have been unicornered. D. Robert White writes funny books on lawyer language. But again, everyone laughs; no one changes.
3. Plain English Committee, *The Clarity Award*, 71 Mich B J 430 (May 1992).
4. Plain English Committee, *Clarity Awards for 1993*, 72 Mich B J 692 (July 1993).
5. Planck, *The Philosophy of Physics*.

## 8 OUT OF 10 LAWYERS WHOSE CASES WE MEDIATE WALK OUT WITH A SETTLEMENT IN HAND.

Eighty-one\* percent of our cases settle through mediation. The rest go on to lengthy, costly litigation. You now have an alternative to today's crowded dockets. We employ experienced, Professional Attorney-Mediators to confidentially explore available options and help facilitate settlement discussions. As part of the international USA&M Network, our forty affiliated offices have successfully mediated thousands of cases in the following areas:

- Automobile
- Business
- Commercial
- Construction
- Environmental
- Employment
- Insurance
- Maritime
- Medical Negligence
- Partnership Disputes & Dissolutions
- Personal Injury
- Product Liability
- Professional Malpractice
- Premises Liability
- Real Estate
- Securities
- Tort
- Workers' Compensation

If you want to avoid the time consuming and expensive litigation process, experience the refreshing change mediation can bring. After all, eight out of ten lawyers can't be wrong!



**U.S. ARBITRATION &  
MEDIATION OF MICHIGAN, INC.**  
*An Alternative Dispute Resolution Service*

Joel H. Schavrien, J.D. Paul Monicatti, J.D.  
Joseph M. Bourbeau, J.D.

25505 W. 12 Mile Road • Southfield, MI 48034

**Phone: (810) 350-3060 FAX: (810) 350-2560**

*\*81.5% of our cases that were closed during the 2nd quarter of 1990 settled.*

## Is there a way to control skyrocketing litigation costs?

*Yes.*

We have always worked with our clients to hold down the cost of litigation through a variety of case management initiatives. Now, as an alternative to hourly rate billing, **Brooks & Kushman** will share litigation costs using **result dependent** fee arrangements for plaintiffs or defendants. In this way we have a common interest in your success—to achieve the **best results** in the **shortest time** at the **lowest cost** to you.

***Brooks & Kushman Works With You.***

**Brooks & Kushman** concentrates on patent and related intellectual property cases, high technology suits and business litigation. **Brooks & Kushman**, Michigan's fastest growing patent firm, has obtained several multimillion dollar verdicts for its clients. If you would like more information, call Tom Lewry at **(810) 358-4400**.

**Brooks & Kushman P.C.**  
1000 Town Center  
Twenty-Second Floor  
Southfield, MI 48075